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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/654,993	09/05/2003	Hans Sauer	35211/41473	6681
7590 06/06/2006				
BARNES & THORNBURG 750 17TH STREET, N.W. WASHINGTON, DC 20006			EXAMINER PARSONS, THOMAS H	
			ART UNIT 1745	PAPER NUMBER
DATE MAILED: 06/06/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/654,993	<b>Applicant(s)</b> SAUER, HANS	
	<b>Examiner</b> Thomas H. Parsons	<b>Art Unit</b> 1745	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 16 April 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

**(Previous) DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-2, 4, 5, 7, 10, and 13 stand rejected under 35 U.S.C. 102(b) as being anticipated by Malay (6,183,902).

**Claim 1:** Malay in Figure 6 discloses a cell comprising:

a housing having a cover (24), an anode cup (1), and a sealing ring (34), the housing accommodating at least one anode (22); and

the cover (24) accommodating and *securing* at least the cathode (26) and separator (28), and with the sealing ring, forms a preassembled unit inserted into the anode cup. See col. 5: 5-col. 6: 19.

Malay in Figure 6 (col. 5: 48-53) discloses an electrode assembly with an outer diameter larger than the inner diameter of the peripheral wall of the can so that the electrode assembly will be wedged (**i.e. secured**) within the can. Further, Malay on col. 5: 40-47 disclose that a separate ring or similar object could replace the inner wall of the gasket for securing the electrode assembly.

The recitation “ a gas generating cell” has been considered and construed as a statement of intended use, however, because the cell of Malay is structurally the same as that instantly claimed, it would inherently be capable of providing a gas generating cell.

**Claim 2:** Malay in Figure 6 discloses a cover (24) constructed as a deep-drawn part (i.e. it is structurally the same as instantly disclosed) made of a sheet metal (a conductive material) having a cylindrical section (46) and a bottom (36) closing off the cylindrical section at one of its ends and around the center of the bottom, a centric hole (50). See col. 5: 5-col. 6: 19.

The recitation “which permits an exiting of gas from the gas generating cell” has been considered, and construed as a statement of intended use, however, because the hole of Malay is structurally the same as that instantly claimed, it would inherently be capable of permitting an exiting of gas from the gas generating cell.

**Claim 4:** Malay in Figure 6 discloses an anode cup (1) constructed as a deep-drawn part (i.e. it is structurally the same as instantly disclosed) made of a sheet metal (a conductive material) and is filled with an anode material (22). See col. 5: 5-col. 6: 19.

**Claim 5:** Malay in Figure 4 discloses an anode cup (1) having a cylindrical jacket (4) in which a ring slip (14) is constructed which has a slightly larger inside diameter than an outside diameter of the preassembled units, so that a preassembled unit can be fitted from above into the anode cup (col. 5: 14-16).

**Claim 7:** The rejection of claim 7 is as set forth above in claim 1. See col. 3: 47-col. 4: 16.

**Claim 10:** Malay discloses one such cell comprising a battery (col. 1: 15-20 and col. 6: 9-10).

**Claim 13:** Malay in Figure 6 discloses a nickel screen which the Examiner has construed as a cathode disk (col. 5: 66-col. 6: 3).

***Claim Rejections - 35 USC § 103***

3. Claims 3, 6, 8, 9, 11, 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Malay as applied to claims 1 and 7 above.

**Claims 3, 9 and 12:** Malay in Figure 6 discloses a cylindrical section having an upstanding peripheral wall (46) and a sealing ring (34) pressed over the wall (34), the sealing ring having a groove (44) for receiving the wall (46).

Malay in Figure 6 (col. 5: 48-53) discloses an electrode assembly with an outer diameter larger than the inner diameter of the peripheral wall of the can so that the electrode assembly will be wedged (**i.e. secured**) within the can. Further, Malay on col. 5: 40-47 disclose that a separate ring or similar object could replace the inner wall of the gasket for securing the electrode assembly to the can.

Malay does not disclose a cylindrical section radially shaped or flanged over an interior of the anode cup and a sealing ring pressed over the flange. However, it would have been an obvious design choice to one with ordinary skill in the art at the time the invention was made to have modified the cylindrical section with a flanged section, since the Applicants have not disclosed that this particular shape provides any criticality and/or unexpected results and it appears that the invention would perform equally with the cylindrical section and seal as taught by Malay, wherein the cylindrical section and seal combination of Malay would obviously have provided a preassembled unit.

**Claims 6 and 8:** Malay in Figure 6 discloses an air distribution membrane (32) which covers a ring groove in a bottom of the cover (24), and a cathode (26) having a separator coating (28) and adapted to an inside diameter of the cover (24). Malay does not disclose a nickel foam which cover a ring groove in a bottom of the cover. However, it would have been an obvious design choice to one with ordinary skill in the art at the time the invention was made to have modified the air distribution membrane with nickel foam, since the Applicants have not disclosed that this particular material provides any criticality and/or unexpected results and it appears that the invention would perform equally with any air distribution membrane material such as that taught by Malay.

**Claim 11:** Malay on col. 6: 5-10 discloses zinc but is silent as to a zinc gel. However, it would have been an obvious design choice to one with ordinary skill in the art at the time the invention was made to have modified the zinc with a zinc gel, since the Applicants have not disclosed that this particular material provides any criticality and/or unexpected results and it appears that the invention would perform equally with any zinc composition such as that taught by Malay.

#### ***Response to Arguments***

4. Applicant's arguments filed 14 April 2006 have been fully considered but they are not persuasive.

Applicant argues that "the cover in the present application secures at least the cathode and the separator whereas, in Malay, the gasket secures the cathode and the separator.

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In response, Malay in Figure 6 (col. 5: 48-53) discloses an electrode assembly with an outer diameter larger than the inner diameter of the peripheral wall of the can so that the electrode assembly will be wedged (**i.e. secured**) within the can. In addition, the edge of the can (the edge of the can being construed as the edge that is parallel to edge 48 as shown in Figure 6) would support or secure the oversized electrode assembly to the can. Further, Malay on col. 5: 40-47 disclose that a separate ring or similar object could replace the inner wall of the gasket for securing the electrode assembly. The edge of the wall of the cup is compressed against the gasket between the cup and the can thereby forming a seal and an electrical barrier between the can and the cup (col. 5: 55-59).

### ***Conclusion***

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas H. Parsons whose telephone number is (571) 272-1290. The examiner can normally be reached on M-F (7:00-4:30) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Pat Ryan can be reached on (571) 272-1292. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
**PATRICK JOSEPH RYAN**  
**SUPERVISORY PATENT EXAMINER**

Thomas H Parsons  
Examiner  
Art Unit 1745

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